

1984 WL 250000 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 29, 1984

\*1 Franklin R. DeWitt, Esquire  
Attorney at Law  
510 Highway 378  
Conway, South Carolina 29526

Dear Mr. DeWitt:

In a letter to this office you indicated that the City of Conway will hold a public hearing as to the rezoning of certain lots in Conway, two of which are owned by you. You further indicated that you presently serve on the city council. Referencing such a situation you indicated that pursuant to [Section 5-23-40, Code of Laws of South Carolina](#), 1976, as amended, '(t)he legislative body of such municipality shall provide for the manner in which . . . [zoning] . . . regulations and restrictions and the boundaries of . . . [zoning] . . . districts shall be determined, established and enforced and from time to time amended, supplemented or changed. But no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.'

You also stated that the State Ethics Commission in an opinion, a copy of which you forwarded with your letter, determined that while 'a city councilman may represent himself before the city planning commission regarding a rezoning matter', the provisions of [Section 8-13-460, Code of Laws of South Carolina](#), 1976, as amended, '. . . would apply on final approval authority by the city council, thus requiring the council member to disclose his interests, disqualify himself from the discussions, deliberations, votes, and other actions on the matter, and to completely absent himself from the meeting location when the rezoning issue, if it comes before city council, is up for action.'

In your letter, you indicated that you disagreed with the Commission's ruling in that in your opinion while you should abstain from voting on the matter before the council, [Section 5-23-40](#), *supra*, does not require you to leave a council meeting during the discussion or vote on the matter by council members.

Pursuant to [Section 8-13-120\(g\), Code of Laws of South Carolina](#), 1976, the State Ethics Commission is authorized: '(t)o issue, upon request, and publish advisory opinions on the requirements of . . . (the State Ethics Act) . . . '

Referencing such, it is clear that such Commission is the body authorized to interpret the provisions of the State Ethics Act. This Office, therefore, is not authorized to comment on the applicability of the Ethics Act to the facts stated in your letter.

However, in reviewing the factual situation referenced, it appears that the Ethics Commission in stating that you would have to disqualify yourself from any discussion by council and also remove yourself when the rezoning issue was 'up for action' was not attempting to restrict you from exercising your rights as a private citizen to appear before council. As you indicated, [Section 5-23-40](#), *supra*, recognizes the right of 'parties in interest' to be heard. Therefore, it is clear that you could participate as a private citizen at any public hearing but at any council meeting following such public hearing at which time the matter would be up for decision by council, as stated by the Ethics Commission in its opinion, the provisions of [Section 8-13-460](#), *supra*, must be complied with by you.

\*2 If there are any questions, please advise.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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